

REMARKS

Claims 1-31 and 43-67 are pending. Claims 1-31 and 43-67 stand rejected under 35 U.S.C. § 102(b) as anticipated by DuPuis, "What You See Is What You Test: A Methodology for Testing Form-Based Visual Programs", 4-1998.

Reconsideration is requested. No new matter is added. The rejections are traversed. Claims 1-31 and 43-67 remain in the case for consideration.

TRAVERSAL OF ADVISORY ACTION REMARKS

In the Advisory Action, Paper No. 12, dated December 17, 2003, the Examiner argued that the newly submitted declaration and exhibit would not be entered for two reasons. First, the Examiner argued that the newly submitted declaration and exhibit appear to amend the previous declaration, which the Examiner maintained was not permitted under MPEP §§ 602.01 and 602.02. Second, the Examiner argued that the newly submitted declaration and exhibit appear to contradict the previously submitted declaration.

Both of these arguments are incorrect. First, the newly submitted declaration and exhibit are not covered by MPEP §§ 602.01 and 602.02. MPEP §§ 602.01 and 602.02 are both subsections of MPEP § 602, which discusses the "Original Oath or Declaration" as a part of the application. The previously submitted declarations and the newly submitted declarations are not an "Original Oath or Declaration": they are declarations of facts under either 37 C.F.R. § 1.131 or § 1.132. Therefore, MPEP §§ 602.01 and 602.02 are inapplicable.

Support for the position that the previously submitted declarations (and the newly submitted declarations) are affidavits under either 37 C.F.R. § 1.131 or § 1.132 can be found in MPEP § 715.01(c). MPEP § 715.01(c) states that "[w]hen the applicant is one of the co-authors of a publication cited against his or her application, he or she may overcome the rejection by filing an affidavit or declaration under 37 C.F.R. § 1.131. Alternatively, the applicant may overcome the rejection by filing a specific affidavit or declaration under 37 C.F.R. § 1.132 establishing that the article is describing applicant's own work. An affidavit or declaration by applicant alone indicating that applicant is the sole inventor and that the others were merely working under his or her direction is sufficient to remove the publication as a reference under 35 U.S.C. § 102(a)." As the declarations aver that the DuPuis article describes the inventors' own work, and Mr. DuPuis disclaims himself as an inventor, the previously submitted declarations satisfy MPEP § 715.01(c).

In addition, even if MPEP §§ 602.01 and 602.02 were applicable, the newly submitted declarations would still be acceptable. While MPEP § 602.01 does state that the oath cannot

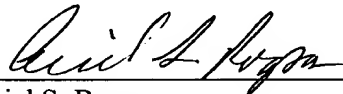
be amended, it also says, "[i]f the wording is not correct or if all of the required affirmations have not been made, or if it has not been properly subscribed to, a new oath or declaration must be required." Since the wording in the previously submitted declarations was, in fact, incorrect (it stated an incorrect publication date for the DuPuis article), the newly submitted replacement declarations would *have* to be entered to correct the error.

Second, the newly submitted declarations do not contradict the previously submitted declarations: they *correct* them. As argued in the Amendment After Final, dated November 21, 2003, the previously submitted declarations included typographical errors. The article, on its face, also shows a publication date of 1998, as described in the newly submitted declarations. Had the typographical errors not been included in the previously submitted declarations, the previously submitted declarations would have shown a publication date of 1998. Accordingly, the newly submitted declarations do not contradict the previously submitted declarations: they correct them.

For the foregoing reasons, reconsideration and allowance of claims 1-31 and 43-67 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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